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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Petition of Global NAPs, Inc. for	)	CC Docket No. 99-198
Preemption of the Jurisdiction of the	)	
Virginia State Corporation Commission	)	
Pursuant to Section 252(e)(5) of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these comments in response to the Commission's *Public Notice* in the above-referenced proceeding.[1] Bell Atlantic's pattern of behavior, both in Virginia and elsewhere in its region, underscores the critical need for the Commission to issue a specific federal rule that prevents incumbent local exchange carriers ("ILECs") from escaping their obligations to compensate co-carriers, including Cox and Global NAPs, for their real costs they incur when terminating calls from ILEC customers.

Cox is interested in this proceeding because it has made a significant investment in providing competitive local exchange service in the areas served by its cable systems. To that end, affiliates of Cox have obtained state certification in thirteen states, including Virginia and Rhode Island in the Bell Atlantic region.[2] As a competitive local exchange carrier ("CLEC") in

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1 "Pleading Cycle Established for Comments on Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia," *Public Notice,* CC Docket No. 99-198, DA 99-984 (rel. May 24, 1999) (the "*Public Notice*")

2 Cox also has entered into an agreement to purchase the cable system operated by Media General in Fairfax County, Virginia, which will significantly expand Cox's Virginia presence.

Virginia, Cox has first-hand experience with Bell Atlantic's refusal to compensate co-carriers for their real costs of carrying traffic to Internet service providers.[3] Thus, Cox is particularly concerned with Bell Atlantic's actions.

It is apparent from the Global NAPs petition, and from the companion filing concerning Bell Atlantic's actions in New Jersey, that Bell Atlantic has engaged in a consistent pattern of behavior to evade its obligations under Section 252(i) to allow CLECs to opt into existing interconnection agreements. Section 252(i) does not permit an ILEC to delay when a CLEC requests to opt into an existing agreement, let alone to deny the request. Bell Atlantic's supposed grounds for denying the Global NAPs request were entirely spurious.[4] Bell Atlantic's objections obviously were posed in the hope that the MFS agreement would run out before Global NAPs could make use of it, and so far, its strategy has succeeded. Neither the Virginia Commission nor this Commission should allow such tactics to yield any reward.[5]

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[3] Cox has documented Bell Atlantic's efforts to avoid paying compensation for Internet-bound traffic in other Commission proceedings, including the pending proceeding on compensation for Internet-bound traffic. *See* Comments of Cox Communications, Inc., CC Docket No. 99-68 at 6 n. 10 (filed April 12, 1999) ("Cox Internet Compensation Comments").

[4] For instance, Bell Atlantic's claim that its costs would increase as a result of entering into an agreement with Global NAPs is contrary to the Commission's rule on this topic, which permits an ILEC to deny an opt-in request only if the ILEC's costs of *providing service to the CLEC* have increased since the original agreement was signed. 47 C.F.R. § 51.809. Similarly, Bell Atlantic's claimed concern that the opt-in request was unreasonably late is belied by the willingness of Global NAPs to accept a term that ended when the MFS agreement ended. Indeed, Bell Atlantic stated in the reciprocal compensation proceeding that "Bell Atlantic allows other carriers to opt into provisions of all agreements, except those that expire within a few months of the request, and requires that the provisions of new agreements *expire upon expiration of the agreement after which the provision is modeled.*"). *See* Reply Comments of Bell Atlantic on Notice of Proposed Rulemaking, CC Docket No. 99-68 at 8 n. 8 (filed April 27, 1999) (emphasis added). When the initial Global NAPs request was made, there was approximately one year left in the term of the MFS agreement.

[5] In particular, the refusal to provide interconnection to Global NAPs should weigh heavily in consideration of any Section 271 applications Bell Atlantic may file for Virginia and New

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The Commission also should take steps to prevent Bell Atlantic and other ILECs from engaging in similar behavior in the future. Almost every significant interconnection dispute that has arisen in the last year has been about a single issue: compensation of the real costs of terminating traffic bound to Internet service providers. In the past, ILECs simply refused to make payments for such traffic, an anticompetitive behavior that they continue to this day. Indeed, Bell Atlantic is one of the chief offenders, even though it originally argued on the record that Internet-bound traffic should be treated as local traffic. The events in Virginia and New Jersey, however, represent a new development. Now Bell Atlantic refuses even to enter into an interconnection agreement with a CLEC that Bell Atlantic believes will serve Internet service providers. But CLECs not terminating traffic with ISPs are offered agreements.[6]

In light of these facts, it is evident that Bell Atlantic and other ILECs will continue to do anything they can to avoid making any payments to CLECs for carrying traffic initiated by ILEC customers. They will keep flouting the Commission and other regulators until it is made obvious that ILECs must pay when their customers make calls to CLEC customers.

The Commission, therefore, must act to plug all remaining loopholes. As Cox has shown in both the initial reciprocal compensation proceeding and in the Commission's current docket on compensation for Internet-bound traffic, the only way to spur compliance is to remove all incentives to treat Internet-bound traffic differently from other traffic. Otherwise, ILECs will continue to retain their incentives to game the regulatory system, to argue about what traffic is

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Jersey. A Bell company should not be permitted to enter the long distance market if it picks and chooses which CLECs it will allow to compete and on what terms.

[6] *See* Petition of Global NAPS, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 99-198 at 6 (filed May 19, 1998).

subject to which compensation rate and to take any other action that will delay or reduce their payment obligations.

The solution is to adopt a federal rule that uses State-determined transport and termination rates to set intercarrier compensation for termination of Internet-bound traffic. As Cox has explained, the costs of transport and termination and termination of Internet-bound traffic are the same.[7] Moreover, adopting identical rates for these essentially identical functions ensures that neither ILECs nor CLECs have any incentive to misidentify traffic (or to dispute another carrier's good-faith determination regarding the nature of the traffic it terminates).[8]

If such a federal rule had been in place when Global NAPs first asked to opt into the MFS agreement in Virginia, Bell Atlantic could not have benefited from refusing to enter into that agreement because there would have been no way to avoid compensating Global NAPs for the costs of terminating Internet-bound traffic. In fact, the only way to avoid compensating Global NAPs (and other CLECs) would be to compete vigorously for and win Internet service provider business. In other words, the rule that Cox has proposed would have resulted in competition between Bell Atlantic and Global NAPs, which was and is the goal of the Telecommunications Act of 1996. Instead Global NAPs has endured months of expensive litigation without being able to function as a CLEC. The Commission should, therefore, move expeditiously to adopt the rule that Cox has proposed to avoid bogging down itself, state commissions, the courts, and all CLECs in pointless and expensive litigation. Any other result or Commission inaction simply invites Bell Atlantic and other ILECs to maintain or expand their anti-competitive and illegal behavior.

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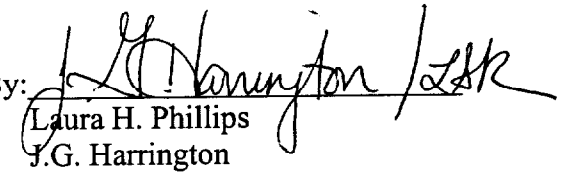
7 Cox Internet Compensation Comments at 7 and Exhibit 2 (Statement of Gerald Brock).

8 *Id.* at 9.

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

COX COMMUNICATIONS, INC.

By: 
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June 15, 1999

CERTIFICATE OF SERVICE

I, Jeanette M. Corley, do hereby certify that on this 15th day of June, 1999, I caused a copy of the foregoing Comments of Cox Communications, Inc. to be served upon each of the parties listed below via hand delivery or first class mail:

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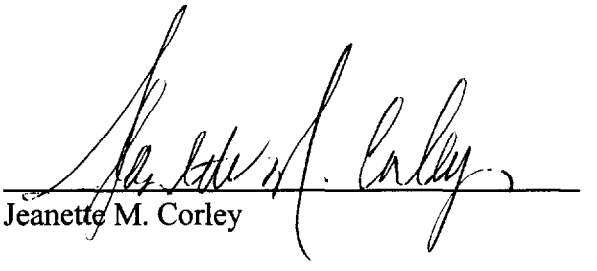

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